



WASHOE COUNTY

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STAFF REPORT BOARD MEETING DATE: *June 13, 2017*

DATE: Wednesday, May 31, 2017
TO: Board of County Commissioners
FROM: John Listinsky, Director, Human Resources/Labor Relations
328-2089, jlistinsky@washoecounty.us
THROUGH: Christine Vuletich, Assistant County Manager
328-2016, cvuletich@washoecounty.us
SUBJECT: Recommendation to approve Amendment to Washoe County 401(a) Plan effective retroactive to January 1, 2017, to modify the definition of Normal Retirement Age under the Plan for those employees hired by Washoe County on or after January 1, 2017; and if approved, authorize Director of Human Resources and Labor Relations to execute same. (All Commission Districts.)

SUMMARY

The current 401(a) Plan Document defines Normal Retirement Age at age 50. The Treasury Department proposed 2016 regulations provide direction in regard to governmental plans applying the 2007 final NRA regulations which would require the Plan to either utilize safe harbor language or satisfy the reasonable representative requirements. The recommended Amendment to Washoe County 401(a) Plan effective retroactive to January 1, 2017 fulfills the safe harbor language requirement.

The recommendation to approve the Amendment, retroactive to January 1, 2017, has been brought to the Board of County Commissioners at the earliest meeting possible after the Deferred Compensation Committee approval.

Washoe County Strategic Objective supported by this item: Valued, Engaged Employee Workforce

PREVIOUS ACTION

On September 27, 2016, the Board approved amending the Washoe County 457 (b) Deferred Compensation Plan Document and MassMutual Administrative Services Agreement, effective October 1, 2016, to allow an employee who does not make an affirmative election to defer or not to defer a portion of his or her Compensation under the Plan to be automatically enrolled in the County's 457(b) deferred compensation plan if the employee is covered by a collective bargaining agreement that authorizes automatic enrollment in the County's 457(b) deferred compensation plan

On December 8, 2015, the Board approved the Trust Agreement appointing Reliance Trust Company as trustee of the assets in the Deferred Compensation 457 Plan retroactively effective November 17, 2015.

On October 27, 2015, the Board approved a five-year Administrative Services Agreement with MassMutual to continue to provide Washoe County's Deferred Contribution Plans through December 31, 2020.

BACKGROUND

In November 2016 MassMutual provided Washoe County Benefits the Treasury Department's Normal Retirement Age (NRA) Regulations that included the 2016 Proposed Final Regulations for qualified §401(a) government retirement plans. (Attachment A) These 2016 regulations provide direction in regard to governmental plans applying the 2007 NRA regulations and will generally impact employees hired during the 2017 plan year and later.

The regulations provide for governmental plans to utilize either the "reasonably representative requirement" or "general safe harbor" language in their definition of Normal Retirement Age. The current definition of Normal Retirement Age in Washoe County's 401(a) Plan Document is age 50. This definition may not reasonably represent the typical retirement age for Washoe County employees and does not meet the Treasury Department's description of safe harbor language.

Based upon the above, the Washoe County Deferred Compensation Committee recommends that an amendment be made to the 401(a) Plan Document to better reflect the reasonable age at which a Washoe County employee may retire while also meeting safe harbor language guidelines for those employees hired by Washoe County on or after January 1, 2017. The Committee's recommendation is to utilize the *Nevada Public Employees' Retirement System eligibility for service retirement benefits based on age and years of service for enrolled members after July 1, 2015*. (Attachment B)

The recommendation to approve the Amendment, retroactive to January 1, 2017, has been brought to the Board of County Commissioners at the earliest meeting possible after the Deferred Compensation Committee approval.

The Normal Retirement Age definition, if approved, will be:

Employees hired prior to January 1, 2017 the Normal Retirement Age (NRA) will be Age 50. For Employees hired on or after January 1, 2017, the NRA will be determined by Age and Years of Service as outlined by Nevada PERS. For Regular Employees, the NRA will be Age 65 and 5 Years of Service, Age 62 and 10 Years of Service, Age 55 and 30 Years of Service, or Any Age and 33.3 Years of Service. For Police and Fire Employees; the NRA will be Age 65 and 5 Years of Service, Age 60 and 10 Years of Service, or Age 50 and 20 Years of Service.

FISCAL IMPACT

No Fiscal Impact

RECOMMENDATION

Recommendation to approve Amendment to Washoe County 401(a) Plan effective retroactive to January 1, 2017, to modify the definition of Normal Retirement Age under the Plan for those employees hired by Washoe County on or after January 1, 2017; and if approved, authorize Director of Human Resources and Labor Relations to execute same. .

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:

Move to approve Amendment to Washoe County 401(a) Plan effective retroactive to January 1, 2017, to modify the definition of Normal Retirement Age under the Plan for those employees hired by Washoe County on or after January 1, 2017; and if approved, authorize Director of Human Resources and Labor Relations to execute same.

A White Paper
for Plan Sponsors

MassMutual's Regulatory Advisory Services



Treasury Department's Proposed Final Normal Retirement Age Regulations for Governmental Plans

These rules will generally apply to **employees** hired on or after January 1, 2017

Plans Impacted

Defined contribution and defined benefit governmental plans (within the meaning of Internal Revenue Code ("Code") §414(d))¹ intending to satisfy Code §401(a) will need to satisfy these proposed final Normal Retirement Age ("NRA") regulations. These proposed final regulations do not apply to Code §§ 403(b) or 457 governmental plans.

Effective Date: The proposed final rules are effective for **employees** hired during plan years beginning on or after the later of January 1, 2017; or the close of the first regular legislative session of

the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the Federal Register.

Governmental plan sponsors may elect to apply these rules earlier.

¹ The term "governmental plan" under Code §414(d) means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies. The term includes a plan which is established and maintained by an Indian tribal government, a subdivision, or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).

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Background

Governmental plans are subject to the pre-ERISA vesting rules (not the Code §411 rules that apply to other 401(a) qualified plans). These pre-ERISA rules have two basic components: 1) full vesting of benefits/contributions at NRA; and 2) NRA generally being the lowest age specified in the plan in which the employee has the right to retire without the consent of the employer. While Revenue Ruling 71-147 noted that NRA is ordinarily described as age 65, it went on to state that a plan could specify a lower age if it is an age at which employees customarily retire in the particular company or industry. A governmental plan does not need to explicitly define NRA within its plans, since this may be deduced from other plan provisions.

2007 final NRA regulations applied many provisions from the current Code §411 which doesn't apply to governmental plans (pre-ERISA Code §411 rule do apply). With these 2007 regulations, the Treasury requested comments regarding the application of the pre-ERISA vesting rules and other qualification rules. Additionally, Notices 2007-69, 2008-98 and 2012-29 either

modified, were requested or delayed the effective date of the 2007 regulations.

2016 Proposed Final Regulations

The proposed final 2016 regulations provide guidance with respect to the applicability of the 2007 NRA regulations to governmental plans.

NRA definition is not required as long as the terms of the plan specify the earliest age at which a participant has the right to retire without the consent of the employer and to receive benefits based upon the amount of the participant's service on the date of retirement at the full rate set forth in the plan without actuarial or similar reduction because of retirement before some later specified age. This will be considered the plan's NRA.

Reasonably Representative requirement from the 2007 regulations apply; that is, the NRA must be an age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

The *general safe harbor* from the 2007 regulations where a NRA of at least age 62 (or the later of age 62 or another specified date such as the fifth

anniversary of participation) is deemed to satisfy the reasonably representative requirement.

Additional Safe Harbors: The proposed final regulations include several additional alternative safe harbors that a governmental plan may use, including:

- Age 60 and 5 years of service
- Age 55 and 10 years of service
- Combined age and years of service of 80 or more
- Any age with 25 years of service that is combined with another Safe Harbor that includes an age². For example, the earlier of the participant's age when credited with (1) 25 years of service and (2) the later of age 60 or the age when the participant has been credited with 5 years of service under the plan.

² Except for the qualified public safety employee safe harbors described below.

*Qualified public safety employees*³ These proposed final regulations expand the age-50 safe harbor rule found in the 2007 regulations, which applies only for plans in which substantially all of the participants are qualified public safety employees. With the proposed final regulations, a governmental plan could satisfy the NRA

requirement by using one of the three safe harbors (see below) for qualified public safety employees and a later NRA that otherwise satisfies the requirements in these proposed final regulations for other participants. These safe harbors, if adopted, are deemed to meet the *reasonably representative requirement*-without regard to the *substantially all requirement*:

- Age 50
- Combined age and years of service of 70 or more
- Any age with 20 years of service. Treasury and the IRS agree with comments that a safe harbor based solely on a period of service for qualified public safety employees is appropriate since these employees typically have career spans that commence at a younger age and continue over a limited period.

If a government plan covers both *qualified public safety employees* and other categories of

³ The term *qualified public safety employee* under Code §72(t)(10)(B) means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision, or any Federal law enforcement officer, Federal customs and border protection officer, any Federal firefighter, any air traffic controller, any nuclear materials courier, any member of the United States Capitol Police, any member of the Supreme Court Police and any diplomatic security special agent of the Department of State.

employees, the three safe harbors noted above cannot be used for the other categories.

As a reminder, eligible retired public safety officers, who have separated from service due to disability or reaching the plan's normal retirement age, are allowed to exclude from gross income up to \$3,000 per year for distributions from their eligible governmental plan to pay for qualified health insurance or long-term care insurance premiums. If the plan permits this type of distribution it must be paid directly from the plan to a health or long-term care insurance company (for defined benefit plans, the plan sponsor should check with the annuity service provider before offering this option). For purposes of applying this \$3,000 limitation, distributions from all eligible government plans are aggregated.

Multiple NRAs in a governmental plan are permitted for different classification of employees. Similarly, the use of one NRA for employees hired before a certain date and another NRA under the plan for employees hired on or after that certain

date would not fail to satisfy the applicable pre-ERISA requirements.

NRA is not one of these safe harbors? If a NRA fails to satisfy one of the safe harbors described within this white paper, the plan still may satisfy the *reasonably representative requirement* based on all the relevant facts and circumstances. A "good faith" determination of the typical retirement age

for the industry in which the covered workforce is employed will be given deference, as long as the determination is reasonable and the NRA would otherwise be consistent with other pre-ERISA vesting requirements. This type of NRA would need to be reviewed on an ongoing basis, to ensure that the facts and circumstances continue to be considered reasonable over time.

Next Steps

We recommend you review your Plan's definition of NRA to confirm whether the definition falls into one of the Safe Harbor definitions described in this white paper. If it doesn't, now is the time to consider adopting a Safe Harbor definition which would apply to employees hired on or after the proposed effective date. These proposed final regulations are to be effective for employees hired

during plan years beginning on or after the later of (1) January 1, 2017 or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the Federal Register.

Since the proposed final regulations apply to employees hired on or after the effective date of the regulations, sponsors can continue to apply the NRA definition in effect prior to the final regulations for employees hired before the effective date of the final regulations. The proposed regulations are silent with respect to the NRA definition that would apply to employees rehired on or after the effective date.

MassMutual Regulatory Advisory Services

If you have questions about the information in this white paper or wondering what your “next steps” might be with respect to Treasury’s Proposed Final NRA Regulations, please contact your MassMutual representative.

This document is for informational purposes only and should not be construed as legal and/or tax advice. Please consult with your own legal counsel and other experienced advisors regarding the application of the matters described herein to your specific circumstances.

Welcome to the Public Employees' Retirement System of Nevada

As a new employee, you are now eligible to participate in a valuable benefit of public employment; a secure defined benefit program.

PERS Contribution Plans

Welcome to the Public Employees' Retirement System of Nevada

As a new employee, you are now eligible to participate in a valuable benefit of public employment; a safe and secure defined benefit program.

Employer Pay Contribution Plan (EPC)

Under this **pre-tax** plan, the employer pays the total PERS contribution on your behalf. You pay for your half of the PERS contribution through a salary reduction or in lieu of a pay raise. Employer paid contributions are not deposited into your member account and are not refundable if you terminate from your employment.

Employee/Employer Contribution Plan

Under this **post-tax** plan, you and your employer share equally in the contribution to PERS. Your after tax contribution is refundable upon the termination of your employment, in lieu of the monthly benefit you may have earned, if any.

When hired into your PERS eligible position, you may have a choice between the two plans or you may be required to enroll into the EPC plan. The choice of contribution plan will depend upon the employer for which you work.

If you are not sure which plan you are contributing under, contact us or your employer's payroll office.

Benefit Packages

Service (Regular) Retirement

Eligible after 5 years of employment.

Disability Retirement

Eligible after 5 years of employment. (Special conditions apply)

Survivor Benefits

Eligible survivors may receive benefits, if the member has 2 or more years of service and dies as an active member. An additional benefit is available for a surviving spouse/domestic partner of an active member killed in the line of duty or in the course of employment regardless of service credit.

How are benefits calculated?

When you are eligible to retire, your benefit will be calculated based on the following factors:

Your Service Credit

Total years, months and days worked.

Your Average Compensation

Average of the highest 36 consecutive months of PERS eligible salary you received while employed.

Benefit Formula

Service Credit x 2.25% x Average Monthly Compensation =
Unreduced Benefit for Regular Members

Service Credit x 2.5% x Average Monthly Compensation =
Unreduced Benefit for Police/Fire Members

Calculation Example

Regular	20 years x 2.25% = 45%
	45% x \$2,500.00 average comp =
	\$1,125.00 monthly lifetime benefit*
Police/Fire	20 years x 2.5% = 50%
	50% x \$2,500.00 average comp =
	\$1,250.00 monthly lifetime benefit*

*If under the required retirement age, an early retirement reduction of 6% for each early year will be subtracted from your monthly benefit.

Eligibility for Retirement Benefits

Eligibility for service retirement benefits for newly enrolled members after July 1, 2015 are as follows:

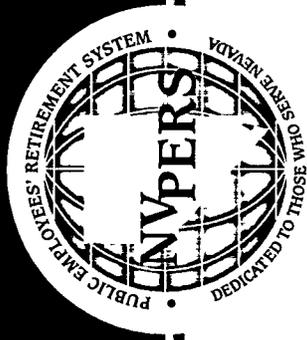
Regular Members	
Years of Service	Retirement Age
5 years	65
10 years	62
30 years	55
33.3 years	Any Age

Police/Fire Members	
Years of Service	Retirement Age
5 years	65
10 years	60
20 years	50



PERS at a Glance

PERS Mission



- PERS provides secure lifetime retirement benefits to eligible members.
- PERS was created by the NV Legislature in 1947 and we have grown to serve over 100,000 members and 45,000 benefit recipients.
- A 7-member Board of Trustees governs the system
- The system's assets are invested for the exclusive benefit of members and beneficiaries of the fund.
- Over 190 public employers participate in PERS.
- Informational programs are offered in both Las Vegas and Carson City offices.
- After 90 days of employment you can set up your own online member account at: www.nvpers.org
- Our knowledgeable call center representatives are available to assist you Monday through Friday, 8:00 AM to 5:00 PM.
- Member Statements are completed yearly and accessible through your secure member account. Notification of the Member Statement is sent to your public employer.

It is the mission of PERS to provide:

- Employers with the ability to attract and retain quality public employees
- Members with reasonable benefits at retirement
- The people of Nevada with the full benefit of well trained public employees

Review your

Summary Plan Description

You will find this publication on our website homepage under Publications.

We recommend all new members review the Summary Plan Description for more information regarding the benefits available to you.

This document has been prepared for members of the Public Employees' Retirement System of Nevada to provide general information.

It is based on retirement law effective from the 78th session of the Nevada Legislature, 2015. This is not a legal document, nor is it intended to serve as a basis for legal interpretation. Official legal reference may be found in the Nevada Revised Statutes.

New Member Booklet

Members enrolled on or after July 1, 2015

Carson City
693 W. Nye Lane
Carson City, NV 89703
(775) 687-4200
Fax: (775) 687-5131

Las Vegas Eastern
5820 S. Eastern Ave., Suite 220
Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6934

Las Vegas Summerlin
7455 W. Washington Ave., Suite 150
Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 304-0697

Toll free: 1-866-473-7768

Website: www.nvpers.org

AMENDMENT TO WASHOE COUNTY 401(A) PLAN (“the Plan”)

WHEREAS, Washoe County (the “Employer”) maintains the Washoe County 401(a) Plan (the “Plan”) for its employees;

WHEREAS, Washoe County has decided that it is in its best interest to amend the Plan;

WHEREAS, Section 14.01(b) of the Plan authorizes the Employer to amend the selections under the Washoe County 401(a) Plan Adoption Agreement.

NOW THEREFORE BE IT RESOLVED, that the Washoe County 401(a) Plan Adoption Agreement is amended as follows. The amendment of the Plan is effective as of 1-1-2017.

1. The Adoption Agreement is amended to read:

7-1 **NORMAL RETIREMENT AGE:** Normal Retirement Age under the Plan is:

- (a) Age ____ (not to exceed 65).
- (b) The later of age ____ (not to exceed 65) or the ____ (not to exceed 5th) anniversary of:
 - (1) the Employee’s participation commencement date (as defined in Section 1.64 of the Plan).
 - (2) the Employee’s employment commencement date.
- (c) Employees hired prior to January 1, 2017, the Normal Retirement Age (NRA) will be Age 50. For Employees hired on or after January 1, 2017, the NRA will be determined by Age and Years of Service as outlined by the Nevada PERS. For Regular Employees, the NRA will be Age 65 and 5 Years of Service, Age 62 and 10 Years of Service, Age 55 and 30 Years of Service, or Any Age and 33.3 Years of Service. For Police and Fire Employees; the NRA will be Age 65 and 5 Years of Service, Age 60 and 10 Years of Service, or Age 50 and 20 Years of Service.

EMPLOYER SIGNATURE PAGE

PURPOSE OF EXECUTION. This Signature Page is being executed to effect:

- (a) The adoption of a **new plan**, effective [*insert Effective Date of Plan*]. [*Note: Date can be no earlier than the first day of the Plan Year in which the Plan is adopted.*]
- (b) The **restatement** of an existing plan, in order to comply with the requirements of PPA, pursuant to Rev. Proc. 2011-49.
 - (1) Effective date of restatement: _____. [*Note: Date can be no earlier than January 1, 2007. Section 14.01(d)(2) of Plan provides for retroactive effective dates for all PPA provisions. Thus, a current effective date may be used under this subsection (1) without jeopardizing reliance.*]
 - (2) Name of plan(s) being restated: _____
 - (3) The original effective date of the plan(s) being restated: _____
- (c) An **amendment or restatement** of the Plan (other than to comply with PPA). If this Plan is being amended, a snap-on amendment may be used to designate the modifications to the Plan or the updated pages of the Adoption Agreement may be substituted for the original pages in the Adoption Agreement. All prior Employer Signature Pages should be retained as part of this Adoption Agreement.
 - (1) Effective Date(s) of amendment/restatement: 1-1-2017
 - (2) Name of plan being amended/restated: Washoe County 401(a) Plan
 - (3) The original effective date of the plan being amended/restated: 6-2-2003
 - (4) If Plan is being amended, identify the Adoption Agreement section(s) being amended: Section 7-1 to change the Normal Retirement Age.

VOLUME SUBMITTER SPONSOR INFORMATION. The Volume Submitter Sponsor (or authorized representative) will inform the Employer of any amendments made to the Plan and will notify the Employer if it discontinues or abandons the Plan. To be eligible to receive such notification, the Employer agrees to notify the Volume Submitter Sponsor (or authorized representative) of any change in address. The Employer may direct inquiries regarding the Plan or the effect of the Favorable IRS Letter to the Volume Submitter Sponsor (or authorized representative) at the following location:

Name of Volume Submitter Sponsor (or authorized representative): Massachusetts Mutual Life Insurance Company
Address: 1295 State Street, Springfield, MA 01111-0001
Telephone number: (800) 309-3539

IMPORTANT INFORMATION ABOUT THIS VOLUME SUBMITTER PLAN. A failure to properly complete the elections in this Adoption Agreement or to operate the Plan in accordance with applicable law may result in disqualification of the Plan. The Employer may rely on the Favorable IRS Letter issued by the National Office of the Internal Revenue Service to the Volume Submitter Sponsor as evidence that the Plan is qualified under Code §401(a), to the extent provided in Rev. Proc. 2011-49. The Employer may not rely on the Favorable IRS Letter in certain circumstances or with respect to certain qualification requirements, which are specified in the Favorable IRS Letter issued with respect to the Plan and in Rev. Proc. 2011-49. In order to obtain reliance in such circumstances or with respect to such qualification requirements, the Employer must apply to the office of Employee Plans Determinations of the Internal Revenue Service for a determination letter. See Section 1.50 of the Plan.

By executing this Adoption Agreement, the Employer intends to adopt the provisions as set forth in this Adoption Agreement and the related Plan document. By signing this Adoption Agreement, the individual below represents that he/she has the authority to execute this Plan document on behalf of the Employer. This Adoption Agreement may only be used in conjunction with Basic Plan Document #05. The Employer understands that the Volume Submitter Sponsor has no responsibility or liability regarding the suitability of the Plan for the Employer's needs or the options elected under this Adoption Agreement. It is recommended that the Employer consult with legal counsel before executing this Adoption Agreement.

Washoe County
 (Name of Employer)

 (Name of authorized representative) (Title)

 (Signature) (Date)